IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Mohan Singh vs. State of Rajasthan & Ors.
(S.B.C.Writ Petition No.3963/04)

Dated of order :- 1st September,2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.Harish Purohit, Advocate for the petitioner.
Mr.Rameshwar Dave,Dy.Government Advocate for the respondent.

REPORTABLE

The petitioner has filed this writ petition with the prayer that the respondents may be directed to consider his case for promotion to the post of Assistant Director Agriculture from the date persons junior to him were promoted and may be further directed to make fixation of his pay in the pay scale pertaining to the post of Agriculture Officer w.e.f. 31.3.1991 and pay him all actual benefits accrued therefrom. He has also prayed that the action of the respondents in making notional fixation without actual benefits may be declared illegal.

The facts giving rise to the present petition are that after being selected by the Rajasthan Public Service Commission, Ajmer, the petitioner was appointed as Agriculture Extension Officer by the respondents vide order dated 22.7.1971. The respondent no. 1 passed an order on 30.3.1991 promoting various other officers on the post of Agriculture Officer against the vacancies of the year 1990-91. However it

was stated in the order that the recommendations by the Departmental Promotion Committee qua the petitioner has been kept in sealed cover because of the lodgment of F.I.R. against him on 25.2.1980 for offence u/s. 5(1)(E)(2) of the Prevention of Corruption Act, 1947 on charges of possessing assets disproportionate known sources of his income. The investigation of this F.I.R. ultimately culminated in filing of the Final Report on 19.12.1987 which was accepted by the Court on 6.3.1992. In spite of this, the respondents did not open the sealed cover and therefore did not grant promotion to the petitioner. He submitted several representations but the respondents did not redress his grievance. The petitioner preferred S.B.C.Writ Petition No. 628/2000 which was disposed of by this Court vide judgment dated 22.5.2000 directing the respondents to consider his case for promotion. The petitioner thereafter retired from service on attaining the age of superannuation on 31.7.2000. Finally, vide order dated 9.9.2003 the respondents opened the sealed cover and accorded promotion to the post of Agriculture Officer against the vacancies of the year 1990-91 on seniority cum merit basis. It has been submitted that even though his regular promotion order was issued on 9.9.2003 but the petitioner was promoted on the post of Agriculture Officer in the year 1985 and continued to hold the same uptil the date of his retirement on 31.7.2000. In these circumstances, he submitted a representation to the respondents to further consider his case for promotion to the post of Assistant Director Agriculture(Extension) as the persons junior to him were already promoted but the case of the petitioner was not considered for promotion. The petitioner submitted a representation to this effect on 10.9.2003 followed by another

representation on 25.9.2003. His representation was forwarded by Assistant Director(Extension), Bali District Pali on 12.1.2004 to the Accounts Officer, Directorate of Agriculture,Jaipur for appropriate directions. The Joint Director Agriculture(Admn.), Jaipur directed the Assistant Director Agriculture(Extension), Bali to allow only notional benefits to the petitioner by making fixation of his pay w.e.f. 31.3.2000. Actual benefits of promotion were thus denied to the petitioner. Hence this writ petition.

The respondents have contested the writ petition and filed a reply thereto. In the reply, it has been submitted that when the Departmental Promotion Committee originally met to consider case of the petitioner for promotion on the post of Agriculture Officer, the petitioner was facing investigation in a criminal case and therefore the recommendations of the Departmental Promotion Committee qua him were kept in sealed cover. However, prior to conclusion of the said case, another disciplinary inquiry was initiated against the petitioner under Rule 16 of the CCA Rules and therefore the sealed cover could not be opened. Finally, the departmental enquiry was concluded and the competent authority passed an order on 20.3.2002 whereby his 25% pension for a period of five years was ordered to be withheld. It was only thereafter that the sealed cover was opened as per the directions of Dy.Secretary, Agriculture(Group-I) Department, Rajasthan and the petitioner was accorded promotion on 9.9.2003. The petitioner has been given notional benefits in the matter of fixation of his pay from the post of Agriculture Officer w.e.f. 31.3.1991. The respondents have submitted that the

representation submitted by the petitioner has been decided by a detailed and speaking order dated 13.10.2000 They have further submitted that the said order was passed pursuant to the directions given by this Court in which the respondents have stated that since the disciplinary inquiry was initiated against the petitioner vide memorandum of charge-sheet dated 5.6.1997 issued to him under Rule 16 of the C.C.A. Rules, the petitioner could not be promoted on higher post according to the Government circulars dated 26.11.1993 and 2.3.1998 nor the sealed cover in respect of the D.P.C. of the year 1990-91 could be opened. The respondents have also placed on record copy of order of penalty dated 20.3.2002 passed pursuant to charge-sheet dated 5.6.1997. The respondents have therefore submitted that neither the petitioner can be granted actual benefits for the intervening period nor can he be promoted on the post of Agriculture Officer.

I have heard Mr.Harish Purohit, learned counsel for the petitioner and Mr.Rameshwar Dave, learned Dy.Government Advocate and perused the record.

Mr.Harish Purohit learned counsel for the petitioner has argued that even though the petitioner was promoted on the post of Agriculture Officer vide order dated 9.9.2003 and such promotion has been made effective to 31.3.1999 but he has not been paid any monetary benefits for the intervening period despite the fact that the complaint lodged against him culminated into giving final report which was accepted by the Court also. He has argued that having been promoted against the

post of Agriculture Officer against the vacancies of the year 1990-91, the petitioner was also entitled to be considered for promotion on a still higher post of Assistant Director Agriculture (Extension). He has argued that the petitioner has retired from service on 31.7.2000 therefore even from the date from which he was promoted he had served nine more years and therefore his case for further promotion with effect from the date his junior was promoted was required to be considered by the respondents. He has argued that even the order of penalty passed by the disciplinary authority in another matter on 20.3.2000 could not come in the way of his consideration for promotion and in alternative he has submitted that the respondents on their own could not refuse to consider his case for promotion but his case ought to have been sent to the D.P.C. for consideration because his case was liable to be considered inspite of the aforesaid order of penalty which could be taken into account by the D.P.C. only if the date of penalty fall within the period for which the record of the officer under consideration for promotion is required to be examined. Mr.Harish Purohit has relied on the case of Union of India vs. Jankiraman, reported in AIR 1991 S.C. p.2010 and has argued that after acceptance of final report by the Court, sealed cover was required to be opened and acted upon by the respondents. The respondents also could not deny him subsequent promotion. He has also relied upon para 7 of the said judgment wherein their Lordships on the question of arrears for intervening period held that once when the employee was completely exonerated and not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post.

On the other hand, Mr.Rameshwar Dave,learned Dy.Government Advocate has argued that since the petitioner did not actually work on promotional post for the period in question and his promotion having been made as late as on 9.9.2000, he is not entitled to claim salary/benefits of the period on the principle of “no work no pay”. He has argued that sealed cover in case of the petitioner could not be opened because he was subjected to another proceeding which ultimately resulted the penalty of stoppage of 25% of pension for the period of five years. He has therefore argued that the writ petition filed by the petitioner may be dismissed.

I have considered the rival arguments made by the learned counsel for the parties and perused the record.

In the present case, the promotion of the petitioner on the post of Agriculture Officer was withheld on account of the pendency of investigation against the petitioner in a criminal case pursuant to the F.I.R. lodged with Anti Corruption Department for offence u/s . 5(1)(E)(2) of the Prevention of Corruption Act. The Bureau upon conclusion of the investigation ultimately submitted final report on 19.12.1987 and the said report was accepted by the Court of competent jurisdiction on 6.3.1992. This was the only reason for which the sealed cover procedure was invoked in the case of the petitioner. The subsequent charge-sheet which the respondents are now relying was issued on 5.6.1997 whereas recommendation of the D.P.C. kept in sealed cover qua the petitioner

pertained to the vacancies of the period 1993-96. While the sealed cover in the case of the petitioner was shown to have been invoked in the order of promotion passed in respect of other employees on 4.4.1991, the Final Report given by the Bureau was accepted by the Court on 6.3.1997 within a year of the acceptance of the final report. The respondents ought to have therefore immediately opened the sealed cover and acted upon the recommendations of the D.P.C. It is curious to note that the respondents delayed opening of the sealed cover and finally passed the promotion order inordinately late on 9.9.2003. Reason assigned in this order is the pendency of another departmental inquiry against the petitioner for which they could not open sealed cover. While originally recommendations of the D.P.C. qua the petitioner were kept in sealed cover on account of on going investigation against him by the Bureau, surprisingly the order dated 9.9.2003 stated that sealed cover was invoked due to departmental inquiry pending against him and was being opened because such departmental proceedings have since been decided in his favour. The order of penalty which the respondents now seeks to rely upon was dated 20.3.2002 by which the disciplinary proceedings were initiated against the petitioner vide charge-sheet dated 5.6.1997 and since in this disciplinary proceedings, the order of penalty has been passed against him and therefore this inquiry having not been decided in favour of the petitioner, it cannot be held that this was the inquiry proceedings which was referred to in the order dated 9.9.2003. The respondents have not brought particulars/details of any other inquiry pending against the petitioner. Clearly, their action is illegal and contrary to law. They were required in law to have immediately opened

the sealed cover after the final report given by the Bureau was accepted by the Court because that precisely was the reason for which the recommendations of the D.P.C. qua the petitioner were kept in sealed cover. Having not passed his promotion order then, the respondents cannot now deny actual benefits to the petitioner. Arguments raised on behalf of the respondents on the principle of "no work no pay" would not be applicable in the situation that has arisen in the present case. I may in this connection usefully refer to the following passage from the case of Union of India vs. K.V.Jankiraman(supra) :-

> "However, there may be cases where the proceedings, whether disciplinary or criminal, are , for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:
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> "However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so

> to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."
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> To this extent we set aside the conclusion of the Tribunal on the said point."

Adverting to the entitlement of the petitioner to claim further promotion on the post of Assistant Director Agriculture(Extension), it need to be noted that petitioner was granted promotion on the post of Agriculture Officer w.e.f. 31.3.1991, the date on which his juniors were so promoted. The petitioner has asserted that many of his juniors were promoted to the post of Assistant Director Agriculture(Extension) and this fact has not been denied by the respondents. There is no reason for non-consideration of the case of the petitioner for promotion to the post of Assistant Director Agriculture(Extension) from Agriculture Officer, on which post he has been promoted on 31.3.1991. Moreover, delay in non-consideration of his case for promotion to higher post is solely attributable to the respondents because they did not then open the sealed cover and did not timely grant him promotion on the post of Agriculture Officer. They delayed the matter so much that the petitioner finally retired from service having attained the age of superannuation. The penalty of stoppage of 25% of pension for five years imposed by the disciplinary authority on the petitioner vide order dated 20.5.2002 was based on the charge-sheet served upon him on 5.6.1997. If the petitioner's case for promotion to the post of Assistant Director Agriculture(Extension) was considered earlier then service of charge-sheet dated 5.6.1997, this charge-sheet would not

have come in his way for right to consideration as sealed cover procedure can be resorted only from the date of issuance of charge-sheet and not before . Reference in this connection may be made to the following observations of the Hon'ble Supreme Court in Union of India vs. K.V.Jankiraman's case(supra):-

> "On the first question, viz. as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior tot hat stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet , it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc., does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations taken an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them,ordinarily it would not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure."

It would be evident from the above mentioned observations of the Hon'ble Supreme Court that the petitioner's right to consideration

for promotion could not be denied to him in so far as the period prior to issuance of the charge sheet dated 5.6.1997 is concerned. As far as order of penalty dated 20.3.2002 is concerned, if the petitioner's right to consideration falls subsequent to the date of issuance of the charge-sheet on 5.6.1997, the initiation of disciplinary proceedings pursuant to charge-sheet dated 5.6.1997 this could not affect his right to consideration for promotion. His case for promotion would be liable to be considered by the D.P.C. which shall also take into consideration the order of penalty and accordingly formulate its recommendations on the question of promotion of the petitioner.

The respondents however cannot completely deny him the right to consideration for promotion even if his case became ripe for promotion subsequent to issuance of the charge-sheet. According to the settled preposition of law, his case became liable to be considered for promotion by the D.P.C. in spite of the penalty order, it is another matter as to what effect this order of penalty would have on recommendations of the D.P.C.

As a result of the aforesaid discussion, the writ petition is allowed. The respondents are directed to pay to the petitioner actual benefits of promotion on the post of Agriculture Officer w.e.f. 31.3.1991 and are further directed to consider his case for promotion on the post of Assistant Director Agriculture (Extension) with effect from the date on which his immediate junior was promoted and if found suitable, promote him and grant all consequential benefits from the date of such promotion.

Actual monetary benefits and the arrears thereof shall be paid to the petitioner with interest @ 6% per annum. Compliance of this order shall be made within a period of four months from the date of service of copy of this judgment on the respondents. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.